IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

MFA.No. 1127 of 2002()

OPMV.1462/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ATTINGAL
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APPELLANT/CLAIMANT:

G.PRAKASH @ UNNI,
S/O. N.GOPINATHAN NAIR, AGED 29 YEARS,
THADATHARIKATHU VEEDU, MAHADEVAN PACHA, NEAR
POTTIMUKKUM KALLARA P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.NAGARAJ NARAYANAN
SRI.NAIR AJAY KRISHNAN
SRIRAJAN VELLOTH
SRI.SAIJO HASSAN

RESPONDENTS: RESPONDENTS 3,1,2 IN THE OP:
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1. **M/S. ORIENTAL INSURANCE CO.LTD.,**
   DIVISIONAL OFFICE, THAKARAPARAMBU JUNCTION,
   PAZHAWANGADI, THIRUVANANTHAPURAM -23.

2. **M.RAMAKRISHNA PILLAI, KULANGARA VEEDU,**
   KILIMANOOR, THIRUVANANTHAPURAM.

3. **SOMADAS, S/O. VELAYUDHAN,**
   SHEEJA SADANAM, NEAR RRV HIGH SCHOOL, KILIMANOOR
   THIRUVANANTHAPURAM DISTRICT

BY ADV. SRI.MATHEWS JACOB

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 11/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.1127 OF 2002 (C)

Dated this the 11th day of September, 2007

J U D G M E N T

KOSHY,J.

The appellant suffered serious injuries in an accident on 10.3.1997 while he was travelling as a passenger of a bus owned by the 2nd respondent and driven by the 3rd respondent, it dashed against an electric post and he was thrown out. Contending that accident occurred due to the negligence of the driver of the bus, appellant filed application for compensation of Rs.10,00,000/-. The bus was insured by the 1st respondent Insurance company. Tribunal awarded only Rs.3,62,300/- as compensation even though it was found that accident occurred due to the rash and negligent driving of the bus and the bus was validly insured by the 1st respondent Insurance company at the time of accident. Only quantum of compensation is disputed in this appeal.

2. Appellant was aged 25 years at the time of accident. Considering the age and taking guideline from the 2nd Schedule, tribunal has taken 18 as the multiplier. Apex Court in various cases held that for persons of this age group, highest multiplier can be taken. Even though it is contended that considering the prolonged life span, a higher multiplier should be taken cannot be accepted. According to the claimant, he was working as a Designer and Pattern maker in Textile Technology in Messrs.S.R.A. Group, New Delhi earning Rs.6,000/- per mensem. Ext.A19 is a certificate issued by the proprietor of that company showing that the victim had been working in that establishment as a Designer and pattern maker in Textile technology department since 15.4.1991 on a consolidated payment of Rs.6,000/- per mensem and he was removed from the Rolls on 1.9.1999 due to continuous absence and physical inability. The person who issued that certificate has tendered oral evidence as PW2 before the court. Appellant also deposed that he was a tailor by profession but learned designing from a Magazine named 'New Model' published from America, he has studied up to S.S.L.C. Tribunal took only Rs.1,800/- as monthly income as employment certificate was

not accepted. Even if he was only a tailor, he was employed in Delhi and considering the year of accident, we are of the opinion that at least Rs.2,500/- ought to have been accepted as monthly income.

3. With regard to disability and injury, Ext.A4 wound certificate issued from the C.H.C. Kallara shows that petitioner sustained lacerated injury 7 x 2 x 1 cm over the left temporo parietal region, abrasions (1) 3 x 2 cms over the upper eye lid (2) 3 x 3 cm over both knees and black eye (Left) and he was referred to MCH. Ext.A4(a) treatment certificate shows that he was treated as inpatient in the MCH from 10.3.1997 to 18.12.1997 for fracture-skull, spinal cut injury, fracture of T2 + T3 vertebra, paraplegia, bed sores, Neurogenic disfunction bladder etc. and had 100% disability during that time. Ext.A7 reference card also shows his treatment during the above period for fracture of skull T2-T3, haemothorax, Paraplegia, spinal cut injury, bed sores etc. and he was referred to local hospital on discharge. Ext.A8 series are the scan reports showing the fractures stated in Ext.A7. Ext.A9 is a reference card issued from the Medical College Hospital showing that he

was again admitted in the PMR unit on 7.4.1998 and discharged on 8.8.1998. Ext.A10 reference card shows his treatment in the Medical College Hospital as inpatient from 12.9.1998 to 20.10.1998 for traumatic paraplegia T-3. Ext.A11 series O.P. cards issued from the P.M.R. unit show his long, continuous treatment there as O.P. Ext.A12 is another card issued from that hospital showing his attendance there from 23.10.1997 to 18.12.1997. Ext.A14 series are the clinical reports of the victim. Ext.A15 is a certificate issued by Dr.Ramaswamy Pillai, Head of PMR unit stating that the victim was referred to that hospital from MCH on 18.12.1997 for the multiple soft tissue injuries and fracture-temporal bone, fracture of T3 vertebral body, fracture T2 Lamina, hemothorax and traumatic paraplegia, he was treated conservatively for pulmonary condition and for the fracture, underwent skin grafting, he had symptomatic pain relief etc., he was trained for independence in activities of daily living to the extent possible and has now been trained to move in a wheel chair, on review on 17.11.1998 he has (1) Spastic Paralysis of both lower limbs (Motor and sensory level. Mid thoracic region) totally non-functional. (2) Severe Flaxor spasm (3) Neurogenic bowel

and bladder and (4) Extensive severe decubitus Ulcers (Sacral and trachanteric). PW1, doctor, Professor of Medical College Hospital assessed 60% permanent disability. Tribunal also found as follows:

> "The medical documents show that the victim was treated as I.P. in the M.C.H for nearly 15 months during which time he was treated in the P.M.R. Unit for a long period. Now he is on Wheel chair, requiring the assistance of a bye-stander for his routine day to day affairs. He is now not in a position to stand or move."

Tribunal assessed compensation for 60% disability. It is argued that though physical disability is 60%, he will not get any type of work and his entire life is spoiled and he is entitled to compensation for 100% disability. We agree that disability is life long and rightly he is unable to lead a normal life and he will be a burden to others. With this disability he will not get any employment. But he can move in wheel chair. We are of the view that for calculating compensation, 60% disability need be taken into account, considering the lump sum ordered. If that be so, compensation payable for permanent disability and loss of earning power will be Rs.2,500 x 12 x $^{60}/_{100}$ x 18 =

3,24,000/-. Tribunal has granted only Rs.2,33,280/-. Hence additional compensation payable for loss of earning power and permanent disability is Rs.90,720/-. Tribunal has granted loss of actual earning for 11 months during the treatment period an amount of Rs.19,800/-. Since we have taken Rs.2,500/- as monthly income, loss of actual earning during the period of treatment will be Rs.27,500/- and additional amount payable under this ground will be Rs.7,700/-. For cost of medicines only Rs.25,000/- was granted by the tribunal taking into account of the actual Bills for medicines produced. Medical certificate shows that he required life long treatment. Wheel chair will have to be purchased. Since both lower limbs are non functioning totally, he may require continuous medical attendance. Already bed sore developed some other complications. In ***Nagappa v. Gurudayal Singh and others (2002 AIR SCW 5348)*** a three member bench of the Honourable Apex Court held that for future medical treatment and artificial leg etc. costs of medical treatment that inflicted after finalisation shall be taken into account. In this case, one lakh rupees was awarded for future medical treatment. Here thus man affects with paraplegia needs apart from wheel chair

continuous medical treatment. In this connection, we are of the opinion that tribunal ought to have granted Rs.35,000/- more taking treatment and future treatment expenses. It was argued that in ***R.D.Hattangadi v. Pest Control India (P) Ltd. (1995 (1) SCC 551),*** where the appellant who was 52 years old was crippled with paraplegia below the waist and could move only in wheel chair, the Hon'ble Supreme Court enhanced the amount of compensation to Rs.1,50,000/- for pain and suffering and to Rs.1,50,000/- for loss of amenities of life. Here he has to suffer pain etc. from the age of 25. Tribunal has assessed only Rs.25,000/- for pain and suffering and Rs.50,000/- for loss of amenities. Claimant also referred to the Apex Court decisions in ***Amar Sngh v. Ishwara (1999 (1) SCC 214, Nagesha v. M.S.Krishna ((1997) 8 SCC 3439***) and various decisions to show that compensation shall be granted taking into account overall requirement of the claimant till his death. It was argued that amount assessed for transportation was Rs.3,000/- only even though he has to transport by special vehicle to hospital for frequent treatment. Bystander is required till the end of life. But only Rs.6,000/- is awarded. We are of the opinion that Rs.2,000/- more ought to

have been awarded for transportation expenses and Rs.4,000/- more for Bye-stander expenses. Hence considering the total amount, we are not enhancing compensation amount on any other count. The additional compensation of Rs.1,39,420/- shall be deposited by the 1st respondent Insurance company with 7% interest from the date of application till deposit. On deposit of the same, Rs.50,000/- was allowed to be withdrawn. Balance should be deposited in a nationalised bank in the name of the claimant for five years, and he is allowed to claim quarterly interest. Appeal is allowed partly.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.1127 OF 2002 (C)

J U D G M E N T

11th September, 2007